

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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PHOENIX LIGHT SF LTD., BLUE HERON)
FUNDING VI LTD., BLUE HERON)
FUNDING VII LTD., KLEROS)
PREFERRED FUNDING V PLC, SILVER)
ELMS CDO PLC, SILVER ELMS CDO II)
LTD., C-BASS CBO XIV LTD. and C-BASS)
CBO XVII LTD.,) Case No. 14-cv-10116 (VSB) (DCF)
Plaintiffs,)
-against-)
U.S. BANK NATIONAL ASSOCIATION ,)
Defendant.)
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**DECLARATION IN SUPPORT OF U.S. BANK NATIONAL ASSOCIATION'S
TAXATION OF COSTS AGAINST PLAINTIFFS**

I, Samuel L. Walling, hereby declare and state as follows under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at the law firm of Jones Day, attorneys for Defendant U.S. Bank National Association in this action. I have personal knowledge of the facts stated herein.
2. I submit this Declaration in Support of U.S. Bank's Bill of Costs seeking an award of costs against Plaintiffs in this action.
3. On December 24, 2014, Plaintiffs initiated this action by filing a complaint in the United States District Court for the Southern District of New York. *See* Dkt. No. 1. Plaintiffs filed a First Amended Complaint on February 2, 2015 (Dkt. No. 36), a Second Amended Complaint on July 2, 2015 (Dkt. No. 77), and a Third Amended Complaint on January 2, 2018 (Dkt No. 209).

4. On March 30, 2018, U.S. Bank filed a Motion for Summary Judgment, Memorandum of Law in Support of its Motion, Declaration of Eve Kaplan in Support of its Motion, supporting Local Rule 56.1 statement, and Declaration of Michael T. Marcucci in Support of its Motion. Dkt. Nos. 243, 244, 246, 250, 251.¹ On the same day, co-defendant Bank of America, N.A. (hereinafter, “Bank of America”) filed its own Motion for Summary Judgment and supporting materials. Dkt. Nos. 241, 242, 245, 249.

5. On June 8, 2018, Plaintiffs filed an Opposition to Defendants’ Motions, with supporting materials (Dkt. Nos. 301-305, 308-311, 314), and filed a Corrected Opposition with supporting materials on July 3, 2018. (Dkt. Nos. 320-324). On August 6, 2018, U.S. Bank and Bank of America each filed a Reply in support of their respective motions, with supporting materials. Dkt. Nos. 337, 343-345; Dkt. Nos. 338-340.

6. On October 25, 2018, Bank of America and Plaintiffs informed the Court that they had reached a confidential settlement to resolve Plaintiffs’ claims against Bank of America. Dkt No. 373. On November 30, 2018, Plaintiffs requested permission to file a Fourth Amended Complaint to remove the allegations against Bank of America and asked the Court to enter an order “that will preserve U.S. Bank’s pending summary judgment motion and apply it . . . to the Fourth Amended Complaint.” Dkt. No. 384 at 1.

7. On December 3, 2018, the Court ordered Plaintiffs to file a Fourth Amended Complaint, and further ordered that “[t]he summary judgment motion . . . and arguments joined by [U.S. Bank] in [Bank of America]’s summary judgment motion . . . along with all papers submitted in support, opposition, and reply thereto insofar as they are applicable to U.S. Bank, shall apply to the Fourth Amended Complaint.” Dkt. No. 385. On December 14, 2018, Plaintiffs

¹ On April 30, 2018, U.S. Bank filed a Corrected Declaration of Michael T. Marcucci in Support of its Motion for Summary Judgment, with supporting exhibits. Dkt. No. 267.

filed their Fourth Amended Complaint. *See* Dkt. No. 390. On January 18, 2019, U.S. Bank filed an Answer to Plaintiffs' Fourth Amended Complaint. *See* Dkt. No. 396.

8. The Court, in its Opinion and Order entered March 18, 2020, granted U.S. Bank's Motion for Summary Judgment (Dkt. No. 421). A copy of the Order and Opinion is attached hereto as Exhibit 1.

9. On the same day, the Clerk of the Court entered the Judgment (Dkt. No. 422), a copy of which is attached hereto as Exhibit 2.

10. On April 15, 2020, Plaintiffs filed a Motion to Alter or Amend Judgment, with supporting materials. Dkt. Nos. 423-424. U.S. Bank opposed Plaintiffs' motion (Dkt. No. 430), and Plaintiffs filed a Reply (Dkt. No. 432). On August 12, 2020, the Court denied Plaintiffs' Motion to Alter or Amend Judgment. Dkt. No. 436. A copy of that Opinion and Order is attached hereto as Exhibit 3.

11. On April 16, 2020, Plaintiffs filed a Notice of Appeal from, among other things, the Clerk's Judgment entered March 18, 2020 and the Court's Opinion and Order entered March 18, 2020. Dkt. No. 425. On August 14, 2020, Plaintiffs filed an Amended Notice of Appeal from, among other things, the Clerk's Judgment entered March 18, 2020, the Court's Opinion and Order dated March 18, 2020, and the Court's Opinion and Order dated August 12, 2020.

12. On October 4, 2021, the Second Circuit Court of Appeals affirmed the Court's decision granting U.S. Bank's summary judgment motion and denying Plaintiffs' Motion to Alter or Amend Judgment. 2d Cir. Case No. 20-1312, Dkt. No. 150.

13. On October 18, 2021, Plaintiffs/Appellants filed a Petition for Rehearing or Rehearing *En Banc* before the Second Circuit Court of Appeals. 2d Cir. Case No. 20-1312, Dkt. No. 154. That Petition was denied on November 19, 2021. 2d Cir. Case No. 20-1312, Dkt. No. 159.

14. On November 29, 2021, the Second Circuit Court of Appeals issued its mandate, a copy of which is attached hereto as Exhibit 4, transferring jurisdiction back to this Court. 2d Cir. Case No. 20-1312, Dkt. No. 160

15. As the prevailing party, U.S. Bank is entitled to costs pursuant to Local Rule 54.1 of the Local Rules of the U.S. District Courts for the Southern and Eastern Districts of New York, Rule 54(d)(1) of the Federal Rules of Civil Procedure, 28 U.S.C. § 1920, and 28 U.S.C. § 1923.

16. For each of the depositions detailed below, U.S. Bank needed the transcripts in order to amass evidence to support its affirmative defenses and to defend against Plaintiffs' breach of contract claims. At the time each deposition was taken, U.S. Bank expected the transcript and video to be used for the presentation of evidence and/or preparation for trial. U.S. Bank did not obtain the transcripts solely for the convenience of counsel, nor only for purposes of discovery. Further, for each deposition video detailed below, U.S. Bank expected that the video of the testimony might be used to present evidence at trial.

17. The taxable transcript costs detailed below ("transcript fees") comprise exhibit fees necessary to the original deposition transcript and per-page transcription costs, less any per-page costs attributable to word indexes. The taxable video costs detailed below ("video fees") comprise costs associated with videotaping the depositions and with synching the transcript to the video.

18. The costs claimed herein are allowable by law. *See U.S. Media Corp. v. Edde Ent., Inc.*, 1999 WL 498216, at *9 (S.D.N.Y. July 14, 1999) ("To be taxable, the deposition transcripts need not be introduced into evidence at trial. It suffices that at the time the deposition was taken, it was reasonably expected that the transcript would be used for trial preparation... The deposition costs may also be taxed if they were used by the court in ruling on substantive

motions.”); 28 U.S.C. § 1920(2) (the clerk may tax “[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case”); *In re Omeprazole Pat. Litig.*, 2012 WL 5427849, at *4 (S.D.N.Y. Nov. 7, 2012) (deposition video costs are taxable where it is the “expectation among the parties that the video of the testimony might be presented at trial”).

19. The costs detailed below and in U.S. Bank’s Bill of Costs are correct and were necessarily incurred in this action, and the services for which fees have been charged were actually and necessarily performed.

20. For each of the costs detailed below, and documented in the invoices and proofs of payment contained in Appendix B hereto, Jones Day paid the invoices on U.S. Bank’s behalf, and U.S. Bank later reimbursed Jones Day for those payments.

I. Costs for Depositions Under 28 U.S.C. § 1920(2)

21. On June 1, 2017, U.S. Bank incurred transcript fees of \$1,321.65 and video fees of \$570.00 for the deposition of U.S. Bank’s party witness Scott Strodthoff. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs’ summary judgment opposition papers. *See* Dkt. No. 324, Ex. 678.

22. On June 9, 2017, U.S. Bank incurred transcript fees of \$1,291.00 and video fees of \$475.00 for the deposition of U.S. Bank’s party witness Eve Kaplan. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank’s summary judgment reply papers. *See* Dkt. No. 345, Ex. 147.

23. On June 13, 2017, U.S. Bank incurred transcript fees of \$1,345.30 and video fees of \$475.00 for the deposition of U.S. Bank’s party witness Tim Pillar. U.S. Bank necessarily

obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 51.

24. On June 15, 2017, U.S. Bank incurred transcript fees of \$726.02 and video fees of \$237.50 for the deposition of U.S. Bank's party witness Brian Tri. Mr. Tri's deposition was taken simultaneously in this action and a related action, and these fees represent half of the taxable costs included in the single invoice for this action and the related action. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at issue trusts.

25. On June 21, 2017, U.S. Bank incurred transcript fees of \$1,441.75 and video fees of \$570.00 for the deposition of U.S. Bank's party witness Edward Frere. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment reply papers. *See* Dkt. No. 345, Ex. 186.

26. On June 29, 2017, U.S. Bank incurred transcript fees of \$1,344.80 and video fees of \$475.00 for the deposition of U.S. Bank's party witness Elisabeth Brewster. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 50.

27. On July 12, 2017, U.S. Bank incurred transcript fees of \$2,765.05 and video fees of \$475.00 for the deposition of U.S. Bank's party witness Jessica Elliot. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 541.

28. On July 13, 2017, U.S. Bank incurred transcript fees of \$2,407.35 and video fees of \$570.00 for the deposition of U.S. Bank's party witness Shannon Rantz. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 49.

29. On July 14, 2017, U.S. Bank incurred transcript fees of \$1,259.50 for the deposition of Plaintiffs' party witness Michael Mikolajczak. U.S. Bank necessarily obtained the transcript for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 15.

30. On July 14, 2017, U.S. Bank incurred transcript fees of \$589.55 and video fees of \$190.00 for the deposition of U.S. Bank's party witness Shannon Rantz. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

31. On July 18, 2017, U.S. Bank incurred transcript fees of \$1,411.45 and video fees of \$475.00 for the deposition of U.S. Bank's party witness Nicolas Valaperta. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 106.

32. On July 21, 2017, U.S. Bank incurred transcript fees of \$1,170.55 and video fees of \$475.00 for the deposition of U.S. Bank's party witness Brian Giel. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 52.

33. On July 21, 2017, U.S. Bank incurred transcript fees of \$1,021.50 and video fees of \$617.50 for the deposition of Plaintiffs' party witness Stephan Plagemann. U.S. Bank was originally charged for higher video costs, but was issued a refund from its vendor, DTI, when the mistake was identified. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

34. On July 26, 2017, U.S. Bank incurred transcript fees of \$1,642.45 and video fees of \$570.00 for the deposition of U.S. Bank's party witness Dianne Reynolds. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 471.

35. On July 27, 2018, U.S. Bank incurred transcript fees of \$813.15 and video fees of \$665.00 for the deposition of Bank of America's party witness Susan Feld. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

36. On July 27, 2018, U.S. Bank incurred transcript fees of \$1,048.75 and video fees of \$1,422.50 for the deposition of Plaintiffs' party witness Sean Tully. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

37. On August 10, 2017, U.S. Bank incurred transcript fees of \$1,018.00 and video fees of \$1,240.00 for the deposition of Plaintiffs' party witness Alan Geraghty. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and

the transcript was submitted with Plaintiff's summary judgment opposition papers. *See* Dkt. No. 324, Ex. 825.

38. On August 16, 2017, U.S. Bank incurred transcript fees of \$989.95 and video fees of \$285.00 for the deposition of U.S. Bank's party witness Maryellen Hunter. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

39. On August 22, 2017, U.S. Bank incurred transcript fees of \$1,061.70 and video fees of \$380.00 for the deposition of Bank of America's party witness Jay Miller. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

40. On August 24, 2017, U.S. Bank incurred transcript fees of \$1,211.85 and video fees of \$570.00 for the deposition of U.S. Bank's party witness April Lancsak. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

41. On August 30, 2017, U.S. Bank incurred transcript fees of \$983.00 and video fees of \$1,570.00 for the deposition of Plaintiffs' party witness Peter Collins. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 17.

42. On September 8, 2017, U.S. Bank incurred transcript fees of \$1,197.76 and video fees of \$1,305.00 for the deposition of non-party witness Karim Berichi. U.S. Bank necessarily

obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

43. On September 14, 2017, U.S. Bank incurred transcript fees of \$937.50 and video fees of \$1,247.50 for the deposition of Plaintiffs' party witness Claire Rogers. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

44. On September 26, 2017, U.S. Bank incurred transcript fees of \$1,092.25 and video fees of \$380.00 for the deposition of U.S. Bank's party witness Toby Robillard. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 252.

45. On September 28, 2017, U.S. Bank incurred transcript fees of \$902.75 and video fees of \$1,253.75 for the deposition of Plaintiffs' party witness Edward Bankole. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Bank of America's summary judgment papers. *See* Dkt. No. 249, Ex. 18.

46. On October 5, 2017, U.S. Bank incurred transcript fees of \$735.95 and video fees of \$285.00 for the deposition of Bank of America's party witness Patrick Kubik. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 811.

47. On October 9, 2017, U.S. Bank incurred transcript fees of \$1,557.15 and video fees of \$380.00 for the deposition of Bank of America's party witness Ellayne Watson. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the

case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 812.

48. On October 11, 2017, U.S. Bank incurred transcript fees of \$1,299.00 and video fees of \$285.00 for the deposition of U.S. Bank's party witness Erin Folsom. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment reply papers. *See* Dkt. No. 345, Ex. 215.

49. On October 11, 2017, U.S. Bank incurred transcript fees of \$770.85 and video fees of \$285.00 for the deposition of U.S. Bank's party witness John Linssen. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 432.

50. On October 18, 2017, U.S. Bank incurred transcript fees of \$1,254.90 and video fees of \$380.00 for the deposition of U.S. Bank's party witness Michael Bengston. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 115.

51. On October 18, 2017, U.S. Bank incurred transcript fees of \$495.95 and video fees of \$285.00 for the deposition of Bank of America's party witness Martha Boduch. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 829.

52. On October 19, 2017, U.S. Bank incurred transcript fees of \$1,067.15 and video fees of \$380.00 for the deposition of U.S. Bank's party witness Tim Ruxton. U.S. Bank

necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 676.

53. On October 24, 2017, U.S. Bank incurred transcript fees of \$1,178.10 and video fees of \$380.00 for the deposition of U.S. Bank's party witness Charles Pederson. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 688.

54. On October 24, 2017, U.S. Bank incurred transcript fees of \$1,136.40 and video fees of \$380.00 for the deposition of U.S. Bank's party witness Becky Warren. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment reply papers. *See* Dkt. No. 345, Ex. 182.

55. On October 25, 2017, U.S. Bank incurred transcript fees of \$661.05 and video fees of \$190.00 for the deposition of U.S. Bank's party witness Michelle Moeller. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 74.

56. On October 26, 2017, U.S. Bank incurred transcript fees of \$667.80 and video fees of \$380.00 for the deposition of U.S. Bank's party witness Tamara Schultz-Fugh. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 83.

57. On November 9, 2017, U.S. Bank incurred transcript fees of \$981.00 and video fees of \$1,382.00 for the deposition of Plaintiffs' party witness Christine Brunie. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

58. On November 10, 2017, U.S. Bank incurred transcript fees of \$855.30 and video fees of \$1,180.00 for the deposition of Plaintiffs' party witness Phillip Mack. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

59. On November 14, 2017, U.S. Bank incurred transcript fees of \$887.80 and video fees of \$475.00 for the deposition of U.S. Bank's party witness Kimberly Jacobs. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 86.

60. On November 14, 2017, U.S. Bank incurred transcript fees of \$1,603.55 and video fees of \$190.00 for the deposition of U.S. Bank's party witness Edward Kachinski. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to rebut Plaintiffs' claims concerning U.S. Bank's alleged actions or failures to act with respect to the at-issue trusts.

61. On November 16, 2017, U.S. Bank incurred transcript fees of \$888.00 and video fees of \$1,180.00 for the deposition of Plaintiffs' party witness Enno Balz. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 18.

62. On November 21, 2017, U.S. Bank incurred transcript fees of \$1,544.40 and video fees of \$285.00 for the deposition of U.S. Bank's party witness James Byrnes. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 410.

63. On November 21, 2017, U.S. Bank incurred transcript fees of \$1,615.15 and video fees of \$190.00 for the deposition of Bank of America's party witness Tammy Spriggs. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 53.

64. On January 22, 2018, U.S. Bank incurred transcript fees of \$1,207.00 and video fees of \$1,470.00 for the deposition of Plaintiffs' Rule 30(b)(6) witness Peter Collins. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 21.

65. On January 23, 2018, U.S. Bank incurred transcript fees of \$1,077.50 and video fees of \$1,295.00 for the deposition of Plaintiffs' Rule 30(b)(6) witness Peter Collins. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment papers. *See* Dkt. No. 267, Ex. 20.

66. On January 31, 2018, U.S. Bank incurred transcript fees of \$863.10 and video fees of \$380.00 for the deposition of U.S. Bank's Rule 30(b)(6) witness Nicolas Valaperta. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the

case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 270.

67. On February 1, 2018, U.S. Bank incurred transcript fees of \$1,866.05 and video fees of \$475.00 for the deposition of Bank of America's Rule 30(b)(6) witness Susan Franklin. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 755.

68. On February 2, 2018, U.S. Bank incurred transcript fees of \$1,295.40 and video fees of \$380.00 for the deposition of Bank of America's party witness Susan Franklin. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Bank of America's summary judgment papers. *See* Dkt. No. 249, Ex. 43.

69. On February 2, 2018, U.S. Bank incurred transcript fees of \$1,905.10 and video fees of \$285.00 for the deposition of U.S. Bank's Rule 30(b)(6) witness Eve Kaplan. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with U.S. Bank's summary judgment reply papers. *See* Dkt. No. 345, Ex. 187.

70. On February 8, 2018, U.S. Bank incurred transcript fees of \$1,012.25 and video fees of \$1,220.00 for the deposition of non-party witness Thomas Donovan. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

71. On February 9, 2018, U.S. Bank incurred transcript fees of \$1,045.10 and video fees of \$1,267.50 for the deposition of non-party witness Harin De Silva. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the

transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 211.

72. On March 30, 2018, U.S. Bank incurred transcript fees of \$607.25 and video fees of \$870.00 for the deposition of Plaintiffs' party witness David Gault. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

73. On April 5, 2018, U.S. Bank incurred transcript fees of \$555.25 and video fees of \$870.00 for the deposition of non-party witness Alex Cigolle. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case, and the transcript was submitted with Plaintiffs' summary judgment opposition papers. *See* Dkt. No. 324, Ex. 204.

74. On April 5, 2018, U.S. Bank incurred transcript fees of \$508.55 and video fees of \$409.00 for the deposition of non-party witness Munish Sood. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

75. On April 6, 2018, U.S. Bank incurred transcript fees of \$574.25 and video fees of \$715.00 for the deposition of non-party witness Diane Westerback. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

76. On April 6, 2018, U.S. Bank incurred transcript fees of \$490.30 and video fees of \$580.00 for the deposition of non-party witness Tyler Wynn. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

77. On May 4, 2018, U.S. Bank incurred transcript fees of \$756.75 and video fees of \$775.00 for the deposition of non-party witness Michael McLoughlin. U.S. Bank necessarily

obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

78. On July 19, 2018, U.S. Bank incurred transcript fees of \$384.45 and video fees of \$425.00 for the deposition of non-party witness Ivan Halpern. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

79. On August 16, 2018, U.S. Bank incurred transcript fees of \$647.25 and video fees of \$930.00 for the deposition of non-party NIC Management's Rule 30(b)(6) witness Angel Wong. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

80. On August 24, 2018, U.S. Bank incurred transcript fees of \$472.00 and video fees of \$660.00 for the deposition of Plaintiffs' party witness William Cody. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

81. On September 18, 2018, U.S. Bank incurred transcript fees of \$1,036.25 and video fees of \$1,442.50 for the deposition of Plaintiffs' Rule 30(b)(6) witness Peter Collins. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations.

82. On June 7, 2019, U.S. Bank incurred transcript fees of \$805.00 and video fees of \$1,383.50 for the deposition of Plaintiffs' party witness Rod Dubitsky. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank's affirmative defenses, including mitigation and statute of limitations. Transcription and videography vendor Veritext issued a single invoice (No. CS3834434) for video of the Dubitsky

and Erhardt depositions. The video fees described in this paragraph include the costs specifically attributed to the Dubitsky deposition, plus \$135.00, which is half of the \$270.00 “Initial Fee” reflected on the invoice.

83. On June 7, 2019, U.S. Bank incurred transcript fees of \$580.75 and video fees of \$413.00 for the deposition of Plaintiffs’ party witness Joachim Erhardt. U.S. Bank necessarily obtained the transcript and video of the deposition testimony for use in the case to support U.S. Bank’s affirmative defenses, including mitigation and statute of limitations. Transcription and videography vendor Veritext issued a single invoice (No. CS3834434) for the video of the Dubitsky and Erhardt depositions. The video fees described in this paragraph include the costs specifically attributed to the Erhardt deposition, plus \$135.00, which is half of the \$270.00 “Initial Fee” reflected on the invoice.

84. As detailed in Appendices A and B, U.S. Bank incurred a total of \$109,125.38 in taxable costs related to deposition transcripts and videos.

II. Docket Fees Under 28 U.S.C. § 1923

85. Pursuant to 28 U.S.C. § 1923(a), U.S. Bank also seeks \$20.00 in docket fees.

* * *

86. Pursuant to 28 U.S.C. § 1920(2), the total costs being sought by U.S. Bank in the defense of this action are \$109,145.38.

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Respectfully Submitted,

/s/ Samuel L. Walling

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